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Date: (Filing No. S-)

ENVIRONMENT AND NATURAL RESOURCES

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**STATE OF MAINE
SENATE
131ST LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 971, L.D. 2253, “An Act to Authorize a Stop-work Order Regarding an Activity That Is Creating a Substantial Adverse Impact to a Protected Natural Resource”

Amend the bill by striking out the title and substituting the following:

'An Act to Authorize a Stop-work Order Regarding an Activity That Is Creating an Immediate and Substantial Adverse Impact to a Protected Natural Resource'

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 12 MRSA §685-C, sub-§8-A is enacted to read:

8-A. Stop-work order. In accordance with the commission's delegated authority under Title 38, sections 480-E-1 and 480-R and notwithstanding any provision of law to the contrary, if the director of the commission finds that an activity located wholly within the jurisdiction of the commission is being performed in a manner that violates a law administered by the commission, a rule adopted by the commission or a term or condition of a permit or order issued by the commission and that the activity is creating an immediate and substantial adverse impact to a protected natural resource, as determined by the director, the director may issue a stop-work order pursuant to this subsection requiring the cessation of the activity in whole or in part. As used in this subsection, "protected natural resource" has the same meaning as in Title 38, section 480-B, subsection 8.

A. A stop-work order under this subsection must be in writing and must identify:

- (1) The portion of the activity that must immediately cease;
- (2) The law, rule or term or condition of the permit or order that the activity violates;
- (3) The protected natural resource that is being substantially adversely impacted by the activity;
- (4) The duration for which the activity must be ceased;

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1 (5) The conditions under which the activity may resume, which must include, at a
2 minimum, identification of the corrective actions necessary to restore the protected
3 natural resource or remediate or abate the substantial adverse impacts to the
4 protected natural resource from the activity and to prevent any further adverse
5 impacts to the protected natural resource from the activity. Prior to the resumption
6 of the activity subject to the stop-work order, the commission shall conduct a site
7 inspection to assess compliance with the conditions and requirements of the order;
8 and

9 (6) The process by which the person to whom the order is directed may respond
10 to the order, or request that the director rescind or modify the order, while the order
11 is in effect.

12 B. The director shall deliver a stop-work order under this subsection to the person
13 responsible for the activity or, if delivery cannot be made to that person, to that person's
14 employee, contractor or agent or to the owner of the property on which the activity is
15 occurring. The director shall also notify the town, plantation or, in the case of a
16 township, the county commissioners of the county in which the activity is occurring
17 regarding the issuance of the stop-work order.

18 (1) Upon delivery of the stop-work order, the person to whom the order is directed
19 shall comply with the order and immediately cease the activity subject to the order.

20 (2) Upon the written request of the person to whom the stop-work order is directed,
21 the director may rescind or modify the order while the order is in effect.

22 (3) The issuance of a stop-work order or the modification of an order by the
23 director may be appealed by the person to whom the order is directed to the
24 Superior Court pursuant to the Maine Administrative Procedure Act. If the
25 issuance or modification of the stop-work order is appealed to the Superior Court
26 by the person to whom the order is directed, the order remains in effect and
27 enforceable during the pendency of the appeal, except as otherwise provided in the
28 order or by the director or as ordered by the Superior Court.

29 C. If the activity subject to a stop-work order under this subsection is occurring under
30 a permit or order issued by the commission, the duration of the stop-work order may
31 not exceed 2 weeks from the date of issuance of the stop-work order. If the person to
32 whom the stop-work order is directed does not satisfy the conditions set forth in the
33 stop-work order for the resumption of the activity, as determined by the director, the
34 director may extend the stop-work order for an additional time period, not to exceed 4
35 weeks, necessary to satisfy those conditions.

36 D. A person who violates a stop-work order issued under this subsection is subject to
37 a civil penalty of up to \$5,000 per day, per violation of the order, payable to the State
38 and recoverable in a civil action, in addition to any other penalties that may be imposed
39 by the commission by law.

40 E. Nothing in this subsection limits the commission's authority to pursue other
41 administrative or enforcement actions relating to the activities described in a stop-work
42 order issued under this subsection.

43 **Sec. 2. 38 MRSA §347-A, sub-§3-A is enacted to read:**

1 **3-A. Stop-work order.** Notwithstanding any provision of law to the contrary, if the
2 commissioner finds that an activity is being performed in a manner that violates this Title,
3 a rule adopted pursuant to this Title or a term or condition of a license, permit or order
4 issued by the board or the department and that the activity is creating an immediate and
5 substantial adverse impact to a protected natural resource, as determined by the department,
6 the commissioner may issue a stop-work order pursuant to this subsection requiring the
7 cessation of the activity in whole or in part. As used in this subsection, "protected natural
8 resource" has the same meaning as in section 480-B, subsection 8.

9 A. A stop-work order under this subsection must be in writing and must identify:

10 (1) The portion of the activity that must immediately cease;

11 (2) The law, rule or term or condition of the license, permit or order that the activity
12 violates;

13 (3) The protected natural resource that is being substantially adversely impacted
14 by the activity;

15 (4) The duration for which the activity must be ceased;

16 (5) The conditions under which the activity may resume, which must include, at a
17 minimum, identification of the corrective actions necessary to restore the protected
18 natural resource or remediate or abate the substantial adverse impacts to the
19 protected natural resource from the activity and to prevent any further adverse
20 impacts to the protected natural resource from the activity. Prior to the resumption
21 of the activity subject to the stop-work order, the department shall conduct a site
22 inspection to assess compliance with the conditions and requirements of the order;
23 and

24 (6) The process by which the person to whom the order is directed may respond
25 to the order, or request that the commissioner rescind or modify the order, while
26 the order is in effect.

27 B. The commissioner shall deliver a stop-work order under this subsection to the
28 person responsible for the activity or, if delivery cannot be made to that person, to that
29 person's employee, contractor or agent or to the owner of the property on which the
30 activity is occurring. The commissioner shall also notify the municipality in which the
31 activity is occurring regarding the issuance of the stop-work order.

32 (1) Upon delivery of the stop-work order, the person to whom the order is directed
33 shall comply with the order and immediately cease the activity subject to the order.

34 (2) Upon the written request of the person to whom the stop-work order is directed,
35 the commissioner may rescind or modify the order while the order is in effect.

36 (3) The issuance of a stop-work order or the modification of an order by the
37 commissioner may be appealed by the person to whom the order is directed to the
38 Superior Court pursuant to the Maine Administrative Procedure Act. If the
39 issuance or modification of the stop-work order is appealed to the Superior Court
40 by the person to whom the order is directed, the order remains in effect and
41 enforceable during the pendency of the appeal, except as otherwise provided in the
42 order or by the commissioner or as ordered by the Superior Court.

